

1 John A. Stottlemire
2 33103 Lake Garrison Street
3 Fremont, CA 94555
4 Telephone: (614) 358-4185
5 Email: jstottl@comcast.net
6 Defendant, *pro se*

7 UNITED STATES DISTRICT COURT
8
9 NORTHERN DISTRICT OF CALIFORNIA
10
11 SAN JOSE DIVISION

12 COUPONS, INC., a California corporation

13 Plaintiff,

14 v.

15 JOHN STOTTMIRE

16 Defendant.

Case No. 5:07-CV-03457 HRL

**MOTION FOR ADMINISTRATIVE
RELIEF PURSUANT TO CIVIL L.R. 7-11
REQUESTING THAT THE COURT SET A
STATUS CONFERENCE FOR
DECEMBER 16, 2008 OR AS SOON
THEREAFTER AS IS POSSIBLE**

Courtroom: 2, 5th Floor
Judge: Hon. Howard R. Lloyd

17 **I. REQUESTED RELIEF**

18 Pursuant to Civil L.R. 7-11, John Stottlemire ("Stottlemire") respectfully requests that the
19 Court set a status conference on December 16, 2008 or as soon thereafter as is practicable.
20 Stottlemire requests a status conference to discuss and resolve existing breakdown of
21 communication between Coupons, Inc. ("CI") and Stottlemire.

22 The existing breakdown of communication that requires resolution is as follows: On
23 November 13, 2008 CI and Stottlemire entered into a Memorandum of Settlement. As a result of
24 the Memorandum of Settlement, the press has published information which CI believes is based
25 upon a breach of the Memorandum of Settlement by Stottlemire. Consequently, CI has stated to
26 Stottlemire they have no intention of executing a more detailed settlement agreement and they
27 will not file the notice of dismissal.

28 //

//

Motion for Administrative Relief
5:07-CV-03457 HRL

1 **II. FACTUAL BACKGROUND**

2 On November 13, 2008 CI and Stottlemire participated in Early Neutral Evaluation. As a
3 result of Early Neutral Evaluation, CI and Stottlemire signed a Memorandum of Settlement which
4 holds, in part, that the terms of the settlement will remain confidential.

5 On November 14, 2008 CI sent a letter to the Court to inform the Court that CI and
6 Stottlemire have signed a Memorandum of Settlement and that CI and Stottlemire plan to execute
7 a more detailed settlement agreement shortly. This letter is currently on the docket and available
8 for the public to view.

9 On November 17, 2008 CI emailed two documents to Stottlemire. One of these
10 documents is entitled “Stipulation for Dismissal with Prejudice Pursuant to Settlement
11 Agreement” (“Stipulation”). CI has made no indication that the Stipulation would be filed under
12 seal and considering the contents of the Stipulation it is doubtful the Court would allow the
13 document to be filed under seal.

14 On November 19, 2008 the agreed upon language for the documents pertaining to
15 settlement were received by Stottlemire. In CI’s communication to Stottlemire, CI stated that as
16 soon as CI received Stottlemire’s signature they would file the Stipulation. CI has always given
17 Stottlemire the impression that the Stipulation would be filed through the Court’s ECF and no
18 signature was every requested of Stottlemire on the Stipulation so that the Stipulation could be
19 filed manually.

20 On November 19, 2008 Stottlemire posted a comment to his blog which states:

21 “Coupons, Inc. dismisses with prejudice. As long as Coupons, Inc. complies with
22 the confidential settlement agreement, the action against me will be dismissed with
23 prejudice. Dismissal with prejudice means that Coupons, Inc. will be unable to
file this action again. The letter Coupons, Inc. sent to the Court to confirm the
above can be viewed here: Link (PDF)”

24 Any visitor to Stottlemire’s blog who clicked on the word “Link” would have seen the letter CI
25 filed with the Court on November 14, 2008.

26 On November 20, 2008, as a result of Stottlemire’s blog posting, Wired Magazine
27 telephoned and emailed Stottlemire requesting Stottlemire release a statement in regards to the
28 planned settlement agreement. Stottlemire informed Wired Magazine that the terms of the

1 settlement are confidential and released a statement which did not disclose the terms of the
2 settlement. Stottlemire's released statement was:

3 "Without being represented by an attorney, I defended myself in Federal Court
4 against a company who solicited the services of two separate law firms, and in my
5 opinion I kicked their ass. By refusing to succumb to their bullying tactics, I
6 continued to assert my innocence and fought the claims Coupons, Inc. filed against
me. Eventually, terms were agreed upon that resulted in Coupons, Inc. dismissing
the pending lawsuit. This entire experience leads me to believe that a self-
represented litigant can defend himself in Federal Court."

7 Consequently, Wired Magazine published an article and reported that Stottlemire "Defeat[ed the]
8 DMCA Suit" Stottlemire made clear to Wired Magazine that the issues raised in the Complaint
9 filed by CI against Stottlemire were unresolved and there has been no ruling from the Court on
10 those issues and Wired Magazine reported that "Despite the settlement, the legal question at issue
11 remains unsettled – whether Stottlemire's actions were unlawful under the DMCA."

12 On November 21, 2008 CI's attorney, Neil Goteiner, emailed Stottlemire. He stated
13 Stottlemire breached the confidentiality term of the settlement agreement. He said unless
14 Stottlemire agreed to repair damage caused to CI by agreeing to a laundry list of statements that
15 Stottlemire would agree to and publish, that CI would not file the notice of dismissal. The precise
16 language of the statement would be drafted by CI and include, but not limited to, Stottlemire
17 accepting liability for violations of the DMCA. CI then threatened Stottlemire and claimed CI
18 would either have no choice but to "sue to enforce the settlement agreement and seek relief
19 outlined above, looking to [Stottlemire] for the costs of such a law suit, or to withdraw from the
20 settlement and proceed with the case." Stottlemire was given 48 hours to decide if he would
21 agree to CI's new terms of settlement.

22 On November 21, 2008 Stottlemire replied to CI's new demands and stated: "There has
23 been no breach. The terms of the settlement agreement have not been disclosed."

24 **III. DISCUSSION**

25 CI and Stottlemire executed a Memorandum of Settlement during Early Neutral
26 Evaluation on November 13, 2008. The Memorandum of Settlement provides in part that the
27 terms of the Settlement would remain confidential. Five days after CI filed a public document
28 with the Court claiming that the parties had executed the Memorandum of Settlement, Stottlemire

1 published on his website that CI will dismiss the action against Stottlemire with prejudice.
2 Stottlemire's statement is based upon a stipulation provided by CI which will be filed by the
3 parties and available to the public through the Court's docket, PACER and various websites that
4 republish the Court's docket. Stottlemire also stated that in his opinion he defeated two separate
5 law firms while making clear that the claims CI brought against Stottlemire were not ruled on by
6 the Court and that Stottlemire's liability under the DMCA was left unresolved.

7 CI's claims are misguided and have resulted in the parties not being able to communicate.
8 Failure to communicate prevents CI and Stottlemire from executing the Settlement Agreement the
9 parties agreed to during the ENE session. CI claims Stottlemire violated the confidential clause
10 of the Memorandum for Settlement for disclosing facts that CI had previously stated they would
11 file with the Court and allow the entire world to have access to. CI now claims Stottlemire is
12 required to repair damage to CI for CI to proceed with the Settlement Agreement.

13 A contract is an offer, an acceptance, and consideration. The offer and acceptance was in
14 the settlement agreement. The consideration – doing something which you would otherwise not
15 have to do – is spelled out in the Memorandum of Settlement signed by CI and Stottlemire. In the
16 Stipulation, CI offered to make public the "dismissal with prejudice" part of the agreement, and
17 with Stottlemire's signature, he agreed. The consideration is that both Stottlemire and CI can
18 now state publicly that the action ended as a result of dismissal with prejudice whereas, per the
19 agreement, neither Stottlemire nor CI could before. In refusing to sign and file the Stipulation,
20 CI has breached the agreement to settle.

21 **IV. CONCLUSION**

22 Stottlemire and CI have entered into an agreement, and thus a contract was formed.
23 Because of CI's revision of terms through the Stipulation, that constituted an alteration of the
24 contract. Stottlemire accepted the alteration with his signature.

25 Stottlemire respectfully requests that the Court schedule a status conference for December
26 16, 2008 or as soon thereafter as is practicable. As a part of the status conference, Stottlemire
27 respectfully asks the Court to enforce the contract and to order CI to sign the stipulation, as they
28 had promised.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: November 22, 2008

_____/s/
John Stottlemire
Defendant, *pro se*